UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

JANE DOE,	***)***	
	)	
Plaintiff	***)***	
	)	
v.	***)***	***Docket No. 99-262-P-DMC***
	)	
WAYNE D. MANSON,	***)***	
	)	
Defendant	***)***	

FINDINGS OF FACT AND CONCLUSIONS OF LAW[1]

The plaintiff filed suit on August 20, 1999, alleging that the defendant had deprived her of a federal constitutional right, intentionally inflicted emotional distress on her, and assaulted her in 1988 while he was her fifth-grade teacher. A bench trial was held before me on June 20, 2000.

I. Findings of Fact

1. The plaintiff, whose date of birth is December 22, 1976, was a fifth grade student in the defendant's classroom at Frisbee Middle School in Kittery, Maine, in the spring of 1988.

2. The defendant's *nolo* plea to a charge of unlawful sexual contact with the plaintiff in his classroom in the spring of 1988 was accepted and a guilty finding entered in the Maine Superior Court, York County, on July 16, 1999.

3. The defendant taught in the Kittery public schools, mostly in the fifth grade, from 1970 to 1998.

[1] Pursuant to 28 U.S.C. § 636(c), the parties have consented to have United States Magistrate Judge David M. Cohen conduct all proceedings in this case, including trial, and to order the entry of judgment.

4. On a spring day in 1988, while the plaintiff was waiting alone for her father to pick her up from school after a rehearsal for a talent show that had taken place at the end of the regular school day, the defendant asked the plaintiff if she wanted to wait in his classroom, which was located at the end of a long annex to the school building.

5. The plaintiff agreed, accompanied the defendant to the classroom, sat in one of a number of beanbag chairs and began to watch television. The defendant was at his desk behind her. The program on the television suddenly changed to a pornographic presentation, and the defendant came up behind the plaintiff, moved around her chair, removed her pants and sexually assaulted her.[2] The defendant told the plaintiff that if she told anyone about what had just happened, he had the power to keep her back for another year in his class. He then left the room. The plaintiff, who had been crying throughout the assault and after, observed that she was bleeding in the area of her vagina, put her pants back on and went back outside to wait for her father.

6. The plaintiff missed the next day of school, but attended regularly for the remainder of the school year and maintained her academic performance. She tried to tell her mother about the assault but was unable to.

7. In September 1998 the plaintiff and her husband were arguing, as they had on many other occasions, about her inability to trust him.[3] After making him promise not to tell anyone, she told him about the 1988 classroom incident. Her husband was the first person the plaintiff had told about the event since it happened. She had not reported the assault at the time because she was afraid and

[2] Specifically, the defendant fondled the plaintiff's breasts and penetrated her vagina with his penis.

[3] The plaintiff's husband testified credibly about the extent of the plaintiff's lack of trust and its debilitating effect on their marriage. For example, he testified that the plaintiff "didn't trust me to go out the door to go to the store," and that her distrust grew progressively worse.

thereafter did not talk about it because she did not want to think about it.[4] She did not want her husband to tell anyone about it because she found it very embarrassing.

8. The plaintiff's husband told the plaintiff's parents about the incident soon after the plaintiff told him. The plaintiff's father then called the Kittery police.

9. Detective Steven Hamel of the Kittery police was assigned to investigate this complaint. He worked on the case with Detective Sergeant Ronald Avery, his superior. Hamel and Avery interviewed the plaintiff at her home twice; an assistant district attorney and Pam Roberts, the victim advocate for the office of the York County district attorney, were present at the second interview. Hamel and Avery conducted approximately ten other interviews during their investigation of this complaint, although both were not always present for all of these interviews.

10. On November 4, 1998 the defendant went to the police station at approximately 7:30 p.m. at the request of Hamel. He spent approximately four hours at the police station with Hamel. Avery monitored Hamel's interview of the defendant without the defendant's knowledge. After the defendant arrived at the station, Hamel informed him that he was investigating a charge that the defendant had raped one of his students. He also told the defendant that the defendant was free to leave at any time.

11. At the end of the interview, the defendant took approximately 25 minutes to write a statement, a copy of which is in the trial record as Exhibit 1. Avery took notes during the interview, as did Hamel. Hamel later prepared a written report of the interview, after which his notes were destroyed.

12. The defendant was aware that the factual assertions in his statement constituted a crime.

[4] In her trial testimony, the plaintiff explained that, following the assault, she felt "responsible" and "gross."

He testified that, based on what Hamel said to him, he understood that, if he gave Hamel a written statement, there was a "remote possibility" that he could go to jail, publicity would be minimal, and his career as a teacher would be over.

13. In the handwritten statement, the defendant said that the then eleven-year-old plaintiff "was the aggressive one, removing her garments and then mine to the point where genital[s] were exposed. Obviously, in a brief lapse of judgment, things went too far, but lasted no longer than 1-2 minutes before I came to my senses, and repaired myself."

14. During the interview, Hamel asked the defendant to show him his stomach, and the defendant complied. Hamel observed ripples of fat, "pockets" of fat, and moles on the defendant's stomach consistent with a description of the plaintiff's stomach that the plaintiff had given to Hamel.

15. During the interview, the defendant admitted that he had sex with the plaintiff. This admission is included in Hamel's written report, which is in the record as Exhibit 16.

16. The defendant's testimony to the contrary notwithstanding, the defendant was not promised that there would be no publicity or that he would serve no jail time if he confessed to the crime alleged by the plaintiff.

17. The defendant was indicted on a charge of rape arising out of the incident.

18. Between November 4, 1998 and July 16, 1999, when the defendant tendered a plea of *nolo contendere* in the Superior Court for York County to a reduced charge of unlawful sexual conduct as the result of a plea bargain, there was extensive local publicity about the charge against the defendant.

19. During the 1997-98 school year, but before the defendant's sexual assault of the plaintiff took place, the defendant had discussed with the superintendent of the Kittery school system the

possibility that he would retire after the 1998-1999 school year, when he would have 30 years of service.

20. The defendant was sentenced to four years of incarceration, with all but nine months suspended, after his plea was accepted. Exhibit 5. He has served his sentence and is now on probation, the conditions of which include surrender of his teaching certificate and no contact with children under the age of 16. Exhibit 6 (Transcript of Plea Hearing) at 12-13.

21. The plaintiff has not sought counseling or any form of professional treatment as a result of the defendant's conduct, but Roberts, who recommended that she seek counseling, believes that the plaintiff will need some form of treatment in the future. The plaintiff's deep emotional distress was apparent to Hamel, Avery and Roberts, all experienced observers of victims of sexual assault, when they spoke with her in 1998 and 1999, as it was during her trial testimony.

22. The defendant, his parents' only child and his widowed mother's only heir at law, lives with his mother in a house owned by her and having an assessed valuation of $160,000 (Exhibit 9). The defendant's only income, approximately $1,600 per month (before taxes), is derived from his teaching pension. He also owns an annuity with a surrender value of approximately $6,500. Exhibit 10. He works as the volunteer director of a local naval museum. He holds a bachelor of science degree in education, is 53 years old, and is able to work.

23. The plaintiff was entirely credible in her testimonial account of the relevant facts, as were her husband, Hamel and Avery.

24. The defendant's denial that he sexually assaulted the plaintiff and his effort to explain away his written confession otherwise were not credible.

25. At the close of the evidence the defendant's counsel stated that the defendant withdrew each of the three affirmative defenses asserted in the amended answer.

II. Conclusions of Law

1. A public school student who is sexually abused by a teacher is deprived of a liberty interest protected by the Constitution. *Doe v. Taylor Indep. Sch. Dist.*, 15 F.3d 443, 451 (5th Cir. 1994). *See also Stoneking v. Bradford Area Sch. Dist.*, 882 F.2d 720, 727 (3d Cir. 1989). Accordingly, the student may recover damages against the teacher pursuant to 42 U.S.C. § 1983 so long as a "real nexus" exists between the activity out of which the violation occurred and the teacher's duties and obligations as a teacher. *D. T. v. Independent Sch. Dist. No. 16*, 894 F.2d 1176, 1188 (10th Cir. 1990). Here, the abuse took place in the school and because the defendant took advantage of his position as the plaintiff's teacher. There is no question under such circumstances that the necessary nexus exists. *Doe*, 15 F.3d at 452 n.4. The plaintiff is entitled to judgment against the defendant on Count I of her complaint, which raises the section 1983 claim.

2. Under Maine law, a plaintiff seeking to recover for intentional infliction of emotional distress (Count III of the complaint) must establish that:

> (1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct;
> (2) the conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community;
> (3) the actions of the defendant caused the plaintiff's emotional distress; and
> (4) the emotional distress suffered by the plaintiff was so severe that no reasonable man could be expected to endure it.

Maine Mut. Fire Ins. Co. v. Gervais, 715 A.2d 938, 941 (Me. 1998). The defendant teacher in this case certainly had reason to know that sexual assault on his fifth-grade student gave rise to a high degree of risk of harm to her and yet he acted in conscious disregard of that risk. This is all that need be shown in order to establish recklessness in this context. *Id*. In this case there is no question that the conduct credibly described by the plaintiff was extreme, outrageous, atrocious and utterly

intolerable and that the conduct caused the plaintiff emotional distress. While the plaintiff has not yet sought professional treatment for that emotional distress, that fact does not make her distress tolerable by a reasonable person. The testimony established the devastating emotional effects on the plaintiff of the defendant's sexual abuse, including the strong likelihood that those effects will remain with her throughout her life. The plaintiff is entitled to judgment against the defendant on Count II.

3. Maine common law does not recognize a tort of sexual assault, which is alleged in Count IV of the complaint, that is distinct from the tort of assault. Assault occurs when a defendant intends to cause offensive physical contact to a plaintiff and puts the plaintiff in imminent apprehension of such a contact. Restatement (Second) of Torts § 21; s*ee* 17-A M.R.S.A. § 207(1) (defining crime of assault). While the Maine Law Court apparently has not had the opportunity to define the tort of assault in a reported decision, it has noted that the "notion of offensive physical contact" included in Maine's criminal assault statute has the same meaning as the Restatement's definition of battery. *State v. Rembert*, 658 A.2d 656, 658 (Me. 1995). This is a reliable indication that the Law Court is likely to adopt the Restatement definition of the closely related tort of assault when confronted with the issue in an appropriate case. The facts set forth above establish that the defendant assaulted the plaintiff. She is entitled to judgment against the defendant on this claim as well.

4. The plaintiff also seeks punitive damages. On the section 1983 claim, punitive damages are available "when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." *Smith v. Wade*, 461 U.S. 30, 56 (1983). This showing is to be made by a preponderance of the evidence. *Karnes v. SCI Colorado Funeral Servs., Inc.,* 162 F.3d 1077, 1081 (10th Cir. 1998) (and cases cited therein); *see Fishman v.* Clancy, 763 F.2d 485, 489 (1st Cir. 1985) (suggesting, although not holding, that preponderance is appropriate standard of proof). On the state-law claims, punitive damages are

available only if the defendant acted with malice; that is, where the defendant's conduct is motivated by ill will toward the plaintiff or where "deliberate conduct by the defendant, although motivated by something other than ill will toward any particular party, is so outrageous that malice toward a person injured as a result of that conduct can be implied." *Tuttle v. Raymond*, 494 A.2d 1353, 1361 (Me. 1985). For purposes of the state-law claims, malice must be proved by clear and convincing evidence. *Id*. at 1363.

5. Here, the plaintiff has proved by a preponderance of the evidence that the defendant's conduct was recklessly and callously indifferent to her federally-protected rights. She has also established by clear and convincing evidence that the defendant's conduct was so outrageous that malice toward her can be implied. Accordingly, she is entitled to an award of punitive damages.

III. Conclusion

In light of the foregoing, judgment shall enter in favor of the plaintiff and against the defendant in the amount of $150,000 in compensatory damages and $100,000 in punitive damages.[5] The plaintiff also seeks an award of attorney fees in connection with Count I pursuant to 42 U.S.C. § 1988. I will consider that request after application has been made in accordance with this court's Local Rule 54.2.

So ordered.

Dated this 22nd day of June, 2000.

David M. Cohen

[5] In arriving at an award of punitive damages, I have weighed all relevant factors, including the high degree of reprehensibility of the defendant's conduct, consideration of his ability to pay such an award determined in the context of his net worth and his earning capacity, and the length of the sentence imposed on him for the conduct in question.

United States Magistrate Judge

JANE DOE plaintiff	R. TERRANCE DUDDY 775-1020 [COR LD NTC] KELLY, REMMEL & ZIMMERMAN 53 EXCHANGE STREET P.O. BOX 597 PORTLAND, ME 04112 207-775-1020
v.	
KITTERY SCHOOL DEPARTMENT defendant [term 11/15/99]	MELISSA A. HEWEY [term 11/15/99] 772-1941 [COR LD NTC] DRUMMOND, WOODSUM, PLIMPTON & MACMAHON 245 COMMERCIAL ST. PORTLAND, ME 04101 207-772-1941
WAYNE D MANSON defendant	JAMES F. MCNIFF, II, ESQ. [COR LD NTC] MCNIFF & BRIGGS P.O. BOX 330 KITTERY, ME 03904-0330 (207) 439-0440